

REMARKS

Claims 25-53 are currently pending, although claims 44-53 have been withdrawn from consideration. Upon indication of allowable subject matter, Applicants intend to seek rejoinder of claims 44-53, all of which ultimately depend from claim 25, under MPEP 821.04.

The Office Action rejected the pending claims under 35 U.S.C. § 103 as obvious over U.S. patent 5,753,241 (“Ribier I”) in view of U.S. patent 5,130,122 (“Tabibi”) and J. Colloid & Interface Science (“Kenji”) as evidenced by U.S. patent 6,669,849 (“Nguyen”). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The Office Action recognized that Ribier I does not teach nanoemulsions containing the required surfactants or nanoemulsions having the required turbidity. (Office Action, page 4).

To compensate for Ribier I’s failure to teach or suggest the claimed surfactant, the Office Action asserted that Tabibi’s general reference to “surfactants” would be sufficient to lead one skilled in the art to use the required solid surfactants selected from the group consisting of esters of a fatty acid and of a sugar and ethers of a fatty alcohol and of a sugar, and that motivation to combine these references existed because they both relate to submicron emulsions.

To compensate for Ribier I’s failure to teach or suggest the required turbidity, the Office Action asserted that Nguyen’s disclosure of water samples having floc size of 1-2 mm

and turbidity of 3.6 NTU would lead one skilled in the art to expect that Ribier I's emulsions would inherently have the required turbidity.

Finally, the Office Action asserted that Kenji teaches adding sucrose distearate to improve the solubilization capacity of non-ionic microemulsions, so it would have been obvious to add sucrose distearate to Ribier I's compositions (in view of Tabibi's disclosure relating to surfactants generally) to produce the claimed nanoemulsions.

None of the applied art teaches or suggests adding the required solid surfactants to nanoemulsions having at least one oil having a molecular weight of greater than 400.

The Office Action recognized that Ribier I does not disclose the claimed surfactant. Similarly, the Office Action recognized that Tabibi neither teaches nor suggests the required solid surfactants. Finally, Nguyen neither teaches nor suggests the claimed surfactants. Because the required surfactant is completely missing from these references, the combination of these references cannot yield the claimed nanoemulsions.

Kenji cannot compensate for the fatal deficiencies of these references. First, Kenji relates to microemulsions, not nanoemulsions -- none of the applied art relates in any way to adding the required surfactants to produce a nanoemulsion. This is particularly true given that Tabibi relates to microemulsions, not nanoemulsions,¹ and that Nguyen does not relate to nanemulsions in any way -- Nguyen relates to a completely different art, disclosing a water treatment process. In short, no teaching or suggestion exists to add the required solid surfactant to nanoemulsions.

¹ Specifically, Tabibi discloses emulsions with oil globules having a diameter of 0.5 microns (500 nm), preferably 0.3 microns (300 nm), and exemplifies emulsions with oil globules having a diameter of 0.17 microns (170 nm), 0.20 microns (200 nm), and 0.27 microns (270 nm). Thus, Tabibi does not disclose or suggest preparing the claimed nanoemulsions having the required oil globule size.

Second, Kenji does not disclose nanoemulsions containing at least one oil having a molecular weight of greater than 400. Rather, Kenji relates to microemulsions containing decane (MW = 142). Thus, not only does Kenji fail to disclose nanoemulsions, but it fails to disclose the specified nanoemulsions of the present invention having at least one oil with a molecular weight of greater than 400.

No teaching or suggestion exists in Kenji (or any of the other applied art) to modify the disclosure therein to combine the required solid surfactant and the required oil having the required molecular weight while at the same time lowering oil globule size to that of the claimed nanoemulsion with the reasonable expectation that a stable nanoemulsion product would result.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

The Office Action also objected to the oath/declaration, asserting that correct citizenship of the inventors has not been indicated. Applicants respectfully submit that such citizenship has been properly indicated. French citizenship properly identifies the inventors as being from France. That the oath/declaration is sufficient is evidenced by the fact that the same declaration was submitted in the parent case, U.S. patent application serial no. 09/460,092, and the parent case issued as U.S. patent 6,689,371. Clearly, the oath/declaration was sufficient for the parent case, meaning that it is sufficient for the present application as well.

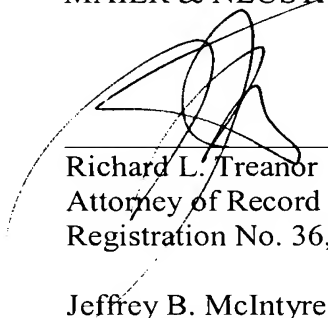
In view of the above, Applicants respectfully request reconsideration and withdrawal of the objection to the oath/declaration.

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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